U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 02 2010

SRC 97 212 51767

IN RE: Petitioner: [redacted]

PETITION: Immigrant Petition by Alien Entrepreneur Pursuant to Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (TSC), initially approved the preference visa petition. Subsequently, the director issued a notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The Administrative Appeals Office (AAO) dismissed a subsequent appeal and affirmed its decision on motion. The petitioner filed a second motion. The AAO remanded the matter to the Director, California Service Center (CSC), to consider whether the petition falls under 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002) [hereinafter the Public Law] and, if not, to certify the matter back to this office for an adjudication of the motion. The matter is now before the AAO on certification for a decision on the petitioner's second motion. The motion will be dismissed.

Section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

The petitioner seeks classification as an alien entrepreneur pursuant to section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5).

In the final NOR dated July 22, 1999, the TSC director determined that the petitioner had failed to demonstrate that he has established a new commercial enterprise that he intended to manage, that he had made a qualifying investment in a targeted employment area and that he would create the necessary employment.

The petitioner filed an appeal, which the AAO summarily dismissed on February 21, 2001, concluding that no brief had been submitted. On motion, filed on March 21, 2001, counsel asserted that he had submitted a brief and additional exhibits to the Texas Service Center despite instructions on the Form I-290B that subsequent submissions should be submitted directly to the AAO. Despite being notified in the AAO's notice of summary dismissal that the brief and additional exhibits were not part of the record, counsel submitted only a copy of the brief. On August 2, 2002, the AAO reopened the matter and considered the evidence of record and counsel's appellate brief.

On September 3, 2002, the petitioner filed a second motion asserting that he will send copies of what he has if the AAO reopens the matter.

As stated in our previous decision, the AAO held the matter in abeyance pending promulgation of regulations implementing the Public Law, which have yet to be published. On October 5, 2009, the AAO remanded the matter to the CSC director for a determination under the Public Law. The AAO advised that should the CSC director find that the Public Law does not apply, the director should issue a written decision to that effect and certify the matter back to this office for an adjudication of the motion on its merits. As stated in this decision, section 11032 of the Public Law provides:

> (b) Eligible Aliens Described.--An alien is an eligible alien described in this subsection if the alien—
>
> > (1) filed, under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision), a petition to accord the alien a status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)) that was approved by the Attorney General after January 1, 1995, and before August 31, 1998;
> >
> > (2) pursuant to such approval, timely filed before the date of the enactment of this Act an application for adjustment of status under section 245 of such Act (8 U.S.C. 1255) or an application for an immigrant visa under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)); and
> >
> > (3) is not inadmissible or deportable on any ground.

Section 11032 of the Public Law continues:

> (c) Treatment of Certain Applications.—
>
> > (1) Revocation of approval of petitions.--If the Attorney General revoked the approval of a petition described in subsection (b)(1), such revocation shall be disregarded for purposes of this section if it was based on a determination that the alien failed to satisfy section 203(b)(5)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)(ii)).

Section 11032 of the Public Law defines eligible aliens as those for whom the director had approved a given petition between January 1, 1995 and August 31, 1998 and subsequently revoked the approval of that petition. Pursuant to Section 11032(e)(1) of the Public Law, the removal of conditions requirements for aliens covered by this section are more lenient, allowing an alien to rely on job creation at any U.S. commercial enterprise in which the petitioner has invested. In our previous decision, the AAO stated in a footnote that although there are no regulations to clarify this issue, the language of section 11032(c) of the Public Law suggests that USCIS may need to only disregard revocations based *solely* on section 203(b)(5)(A)(ii) of Act, as amended.

On January 4, 2010, the CSC director issued a written decision determining that the Public Law does not apply because the petition was revoked on multiple grounds. The CSC director certified the matter back to this office for a determination on the merits of the motion. The CSC director afforded the petitioner 30 days in which to submit a brief to the AAO pursuant to 8 C.F.R. § 103.4. As of this date, more than 30 days later, this office has received nothing further. As the petitioner has not challenged the director determination that the Public Law does not apply, we will limit our decision to the merit of the petitioner's September 3, 2002 motion.

The regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an already-submitted appeal. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider. There is no analogous regulation which allows a petitioner to submit new evidence in furtherance of a previously-filed motion.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. According to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services policy.

The petitioner has not filed a proper motion to reopen or reconsider. His request was not accompanied by any evidence or arguments based on precedent decisions. A request for motion must meet the regulatory requirements of a motion to reopen or reconsider at the time it is filed; no provision exists for USCIS to grant an extension in order to await future correspondence that may or may not include evidence or arguments.

ORDER: The motion is dismissed.